

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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6	TRACY A. JENSON,	)	
7		)	No. CV-10-0234-CI
8	Plaintiff,	)	
9		)	ORDER DENYING PLAINTIFF'S
10	v.	)	MOTION FOR RECONSIDERATION
11		)	
12	FEDERAL AVIATION	)	
13	ADMINISTRATION (FAA), U.S.	)	
14	DEPARTMENT OF TRANSPORTATION,	)	
15		)	
16	Defendant.	)	

Before the court is Plaintiff's "Notification to Court and Motion for Reconsideration due to Misunderstanding," which the court construes as a Motion under FED. R. CIV. P. 59(e) and FED. R. CIV. P. 60(a)(b). (ECF No. 48.) Tracy A. Jenson (Plaintiff) appears *pro se* and *in forma pauperis*; Defendant is represented by Assistant United States Attorney Frank Wilson. The parties have consented to proceed before a magistrate judge. (ECF No. 26.)

**PROCEDURAL BACKGROUND**

Plaintiff, a former air traffic controller filed a complaint against the FAA in September 2009. (ECF No. 3.) Plaintiff alleged gender discrimination in employment under Title VII of the Civil Rights Act of 1964 (Title VII); age discrimination under the Age Discrimination in Employment Act (ADEA); discrimination under the Equal Pay Act (EPA); and violations of 18 U.S.C. § 241. *Id.* The case was transferred to the Eastern District of Washington and, upon consent of the parties, assigned to the undersigned. On June 22,

1 2011, the court granted Defendant's Motion to Dismiss and directed  
2 judgment be entered for Defendant and the file be closed. (ECF No.  
3 46.) Judgment in favor of Defendant was entered on June 22, 2011,  
4 (ECF No. 47); Plaintiff did not appeal the judgment.

5 On September 27, 2011, Plaintiff filed this Motion for  
6 Reconsideration in which he restated his case and re-submitted  
7 exhibits. (ECF No. 48.) Defendant responded on October 5, 2011,  
8 that Plaintiff's pleadings presented no new material facts or  
9 claims, and asserted that the inaccuracies alleged, if they existed,  
10 were not material to the resolutions of the issues before the court.  
11 (ECF No. 49.)

#### 12 DISCUSSION

13 Under the FEDERAL RULES OF CIVIL PROCEDURE, a party may file a motion  
14 to alter or amend a judgment no later than 28 days after the entry  
15 of final judgment. FED. R. CIV. P. 59(e)(2009). "Reconsideration  
16 under Rule 59(e) is appropriate if (1) the district court is  
17 presented with newly discovered evidence, (2) the district court  
18 committed clear error or made an initial decision that was  
19 manifestly unjust, or (3) there is an intervening change in  
20 controlling law." *S.E.C. v. Platforms Wireless Internat'l Corp.* 617  
21 F.3d 1072, 1100 (9<sup>th</sup> Cir. 2010) (quoting *United Nat. Ins. Co. v.*  
22 *Spectrum Worldwide, Inc.*, 555 F.3d 772, 780 (9<sup>th</sup> Cir. 2009).  
23 However, Plaintiff failed to file his motion to alter or amend  
24 within the requisite 28 days after judgment; therefore, his motion  
25 is construed as a motion for relief from final judgment under FED.  
26 R. CIV. P. 60(b). *United Nat. Ins. Co.*, 555 F.3d at 780-81.

27 To obtain relief from a final judgment or order, Plaintiff must  
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1 provide evidence of:

- 2 (1) mistake, inadvertence, surprise, or excusable  
neglect;
- 3 (2) newly discovered evidence that, with reasonable  
4 diligence, could not have been discovered in time to  
move for a new trial under Rule 59(b);
- 5 (3) fraud, . . . misrepresentation, or misconduct by an  
opposing party;
- 6 (4) the judgment is void;
- 7 (5) judgment has been satisfied, released or discharged;  
it is based on an earlier judgment that has been  
8 reversed or vacated; or applying it prospectively is  
no longer equitable; or
- 9 (6) any other reason that justifies relief.

9 FED. R. CIV. P. 60(b); *see, also, Platforms Wireless Internat'l.*, 617  
10 F.3d at 1100.

11 In re-stating his allegations, Plaintiff appears to assert two  
12 primary reasons for his motion for reconsideration: that the courts  
13 misunderstood his complaint and made inaccurate findings, and this  
14 court made inaccurate statements in the dismissal. (ECF No. 48.)  
15 However, his assertions neither establish grounds for relief nor are  
16 the kind of "mistake or inadvertence" contemplated by FED. R. CIV. P.  
17 60(b)). *Swam v. U.S.*, 327 F.2d 431, 433 (7<sup>th</sup> Cir. 1964) (averred  
18 misconception of district court "not within ambit of Rule 60(b))."  
19 If Plaintiff believed this court misunderstood his complaint and was  
20 mistaken as a matter of law, his recourse was to file a motion to  
21 vacate or amend the judgment under Rule 59, or to file a notice of  
22 appeal within 60 days of entry of the judgment. *Id.*; FEDERAL RULE OF  
23 APPELLATE PROCEDURE 4(a).

24 "Rule 60(b) was not intended to provide relief for error on the  
25 part of the court or to afford a substitute for appeal." *Title v.*  
26 *United States of America*, 263 F.2d 28, 31 (9<sup>th</sup> Cir. 1959)(citing  
27 *Ackermann v. United States*, 340 U.S. 193, 202 (1950)). Even  
28

1 assuming Plaintiff's contentions have merit, he is not entitled to  
2 relief under FED. R. CIV. P. 60(b) because his contentions should have  
3 been raised in a direct appeal. *Id.* at 30. An unsuccessful  
4 litigant who "seeks to express his dissatisfaction" after the time  
5 for filing an appeal has expired, has no recourse through FED. R.  
6 Civ. P. 60(b). *Twentieth Century-Fox Film Corp. v. Dunnahoo*, 637  
7 F.2d 1338, 1341-42 (9<sup>th</sup> Cir. 1981) (*quoting Morse-Starrett Products*  
8 *Co. v. Steccone*, 205 F.2d 244, 249(9<sup>th</sup> Cir. 1953)).<sup>1</sup> Accordingly,

9 **IT IS ORDERED** Plaintiff's Motion for Reconsideration (**ECF No.**  
10 **48**) is **DENIED**.

11 The District Court Executive is directed to file this Order and  
12 provide copies to Plaintiff and counsel for Defendant.

13 DATED November 16, 2011.

14  
15 S/ CYNTHIA IMBROGNO  
16 UNITED STATES MAGISTRATE JUDGE  
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21 <sup>1</sup> Regarding Plaintiff's assertion of "inaccurate statements,"  
22 the court has the discretion to correct a "clerical mistake or a  
23 mistake arising from oversight or omission whenever one is found in  
24 a judgment." FED. R. CIV. P. 60(a). Plaintiff makes no showing that  
25 asserted inaccuracies substantially prejudiced his rights in this  
26 action or affected the court's legal analysis and judgment. In  
27 light of the entire record, the court finds the inaccuracies  
28 referenced in Plaintiff's motion are harmless. FED. R. CIV. P. 61.